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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/428,387	10/28/1999	ADAM MICHAEL FENNE	17954-15	4586
7590	01/28/2004		EXAMINER	
JOEL D VOELZKE HOWREY SIMON ARNOLD & WHITE LLP 301 RAVENSWOOD AVENUE BOX NO.34 MENLO PARK, CA 94025			VU, NGOC K	
			ART UNIT	PAPER NUMBER
			2611	

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/428,387	FENNE, ADAM MICHAEL
	<b>Examiner</b>	<b>Art Unit</b>
	Ngoc K. Vu	2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1, 6-11, 13, 15-23, 25, 28-31, 33, 34, 36-40 and 42-48 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,6-11,13,15-18,20-23,25,28-31,33,34,36-40,42 and 44-48 is/are rejected.
- 7) Claim(s) 19 and 43 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 6-11, 13, 15-23, 25, 28-31, 33, 34, 36-40 and 42-48 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is noted that claim 13 depends on the cancelled claim 12. It is not clear what dependency of claim 13 referred to. Therefore, no art rejection is applied for claim 13 because of its dependency.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 6-10, 15-18, 20, 22, 23, 25, 28, 31, 33, 34 and 36-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Montero (US 6,133,912 A).

Regarding claim 1, Montero discloses an Internet message delivery method, comprising:

(a) logging in a first viewer (logging by a subscriber - see col. 6, line 36 to col. 7, line 8)

from one or more viewing stations (more than one terminal 130 – see figure 1), wherein said viewing station further comprises a personal computer operatively connected to the Internet (terminal 130 may be a conventional computer connects to Internet 100 – see col. 4, lines 21-26 and figure 1);

(b) delivering viewing behavior information (e.g., click event or web sites visited) of a first viewer from one or more viewing stations which the first viewer is using to a processing system (250, 210, 285 – see figure 1), wherein the processing system and the viewing station are operatively connected to each other through the Internet (via ISP server 110 – see figure 1; col. 13, line 30 to col. 14, line 5; col. 14, lines 55-60);

(c) delivering demographic information regarding the first viewer to the processing system (sending demographic information from the terminal 130 to server 285 – see col. 4, lines 46-50);

(d) logging in a second viewer from one or more viewing stations of (a) (similar as step (a) above, it is noted that a second viewer can be any subscriber from one of the terminals 130 – see col. 6, line 15 to col. 7, line 8 and step (a));

(e) delivering viewing behavior information of a second viewer from one or more viewing stations which the second viewer is using to the processing system (similar as step (b) above for the second viewer or subscriber – see step (b));

(f) delivering demographic information regarding the second viewer to the processing system (similar as step (c) above for the second viewer of subscriber – see step (c));

(g) processing at the processing system the viewing behavior information of the first viewer and demographic information regarding the first viewer delivered to the processing

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system to select a first viewer multimedia message targeted to the first viewer (based on viewing behavior information, e.g., click event, and demographic information, e.g., subscriber's profile data, to select a sequence of information for a particular subscriber, e.g., first viewer or first subscriber – see 13, lines 59-67; col. 14, lines 55-60 and col. 5, lines 14-25);

(h) processing at the processing system the viewing behavior information of the second viewer and demographic information regarding the second viewer delivered to the processing system to select a second viewer multimedia message targeted to the second viewer (similar step (g) above for second subscriber – see step (g)); and

(i) delivering the first viewer multimedia message to a viewing station of the first viewer (generating the sequence of information for subscriber – see col. 13, lines 64-67; col. 14, lines 57-60).

Regarding claim 23, Montero discloses an Internet message delivery system, comprising:

a log-on system on a viewing station (logging on a terminal 130 – see figure 1; col. 6, line 36 to col. 7, line 8), wherein the viewing station further comprises a personal computer operatively connected to the Internet (terminal 130 may be a conventional computer connects to Internet 100 – see col. 4, lines 21-26 and figure 1);

a processing system (250, 210, 285 – see figure 1) operatively connected to the viewing station through the Internet, wherein viewing information on the viewing of multimedia content (web page – see col. 8, lines 5-26) of a first viewer (e.g., click event or web sites visited is transmitted to server 250) and demographic information of the first viewer is delivered to the processing system (demographic information is transmitted from the terminal 130 to data to server 285 – see col. 4, lines 46-50) through the Internet (via ISP server 110 – see figure 1; col. 13, line 30 to col. 14, line 5; col. 14, lines 55-60) and wherein the processing system uses the

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viewing information and the demographic information to select a desired sponsored video message (based on viewing behavior information, e.g., click event, and demographic information, e.g., subscriber's profile data, to select a sequence of information for a particular subscriber, e.g., first viewer or first subscriber – see 13, lines 59-67; col. 14, lines 55-60 and col. 5, lines 14-25);

means for displaying, through the Internet, at the viewing station multimedia content for viewing by the first viewer (displaying web page at the terminal 130 - see col. 8, lines 21-26); and

means for delivering the message to a viewing station for viewing by the first viewer in conjunction with the viewing by the first viewer of the multimedia content (delivering sequence of information to the subscriber for displaying in conjunction with displaying the requested web page - col. 8, lines 21-33).

Regarding claim 31, Montero discloses a message delivery system, comprising:

a log-on system on first and second viewing station (logging system on more than one terminals 130 – see figure 1; col. 6, line 36 to col. 7, line 8), wherein the viewing station further comprises a personal computer operatively connected to the Internet (terminal 130 may be a conventional computer connects to Internet 100 – see col. 4, lines 21-26 and figure 1);

a multimedia content server (server 150 or 140 – see figure 1);

a message server (server 120 – see figure 1) including a plurality of different sponsored video messages (information such as advertisements, news, message, web page, data packets, stock tickers, announcements, to form a sequence of information – see col. 4, line 63 to col. 5, line 5);

(a) a processing server (250, 210, 285 – see figure 1) which processes multimedia viewing information about a first viewer and therefrom selects a first message (sequence of

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information) from the plurality of messages; wherein the processing server also processes demographic information of the first viewer to select the first message (based on viewing behavior information, e.g., click event, and demographic information, e.g., subscriber's profile data, to select a sequence of information for a particular subscriber, e.g., first viewer or first subscriber – see 13, lines 59-67; col. 14, lines 55-60 and col. 5, lines 14-25);

(b) the first station presenting the first message (sequence of information) from the message server and multimedia content from the multimedia content server for viewing by the first viewer (presenting the sequence of information from server 120 and the requested web page from server 140 or 150 to the subscriber for viewing - col. 8, lines 21-33 and figure 1);

(c) the processing server processing multimedia viewing information about a second viewer and therefrom selecting a second message from the plurality of messages; wherein the processing server also processes demographic information of the second viewer to select the second message (it is noted that a second viewer can be any subscriber from one of the terminals 130, therefore, this part is similar as part (a) above for a second viewer or subscriber – see part (a)); and

(d) the second station presenting the second message from the message server and multimedia content from the multimedia content server for viewing by the second server (similar as part (b) above for the second viewer or subscriber – see part (b)).

Regarding claim 34, Montero discloses a processing server (250, 210, 285 – see figure 1) programmed to:

(a) receive multimedia first-viewer viewing information and first-viewer demographic information relative to a first-viewer (receiving click event record and demographic information of a subscriber from one of terminals 130 – see figure 1; col. 13, line 30 to col. 14, line 5; col. 14, lines 55-60);

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(b) process the multimedia first-viewer viewing information and first-viewer demographic information to obtain first processed information (e.g., record), and associate the first processed information with a first sponsored video message (sequence of information) from a database of messages (server 120 – see figure 1) for delivery to a first viewing station (one of terminals 130 – see figure 1) through the Internet (100 - see figure 1) for viewing by the first-viewer together with multimedia (web page) (for example, based on viewing behavior information, e.g., click event, and demographic information, e.g., subscriber's profile data, to select a sequence of information for a particular subscriber, e.g., first viewer or first subscriber – see 13, lines 59-67; col. 14, lines 55-60 and col. 5, lines 14-37);

(c) receive second-viewer multimedia viewing information and second-viewer demographic information relative to a second viewer (similar as part (a) above, it is noted that a second viewer can be any subscriber from one of the terminals 130 – see part (a)); and

(d) process the multimedia second-viewer viewing information and second-viewer demographic information to obtain second processed information and associate the second processed information with a second sponsored video message from the database for delivery to a second viewing station for viewing by the second-viewer together with multimedia (similar as part (b) above – see part (c)), wherein said processing server and said first and second viewing stations are operatively connected through the Internet (see figure 1).

Regarding claim 37, Montero discloses a processing server (250, 210, 285 – see figure 1), comprising:

(a) means for receiving through the Internet first-viewer demographic information and first viewer multimedia viewing information, both relative to a first viewer (receiving click event record and demographic information of a subscriber from one of terminals 130 through Internet – see figure 1; col. 13, line 30 to col. 14, line 5; col. 14, lines 55-60);

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(b) means for processing the first-viewer demographics information and first viewer multimedia viewing information to obtain a first signal (e.g., record) for delivery to a message server (server 120 – see figure 1) for selecting therefrom a desired first sponsored video message (sequence of information), the first message to be viewed by the first viewer at a viewing station logged onto by said first viewer (for example, based on viewing behavior information, e.g., click event, and demographic information, e.g., subscriber's profile data, to select a sequence of information for a particular subscriber, e.g., first viewer or first subscriber at one of terminals 130 logged onto by that subscriber – see col. 6, line 36 to col. 7, line 8; col. 13, lines 59-67; col. 14, lines 55-60 and col. 5, lines 14-37);

(c) means for receiving through the Internet second-viewer demographic information and second-viewer multimedia viewing information, both relative to a second viewer (similar as part (a) above, it is noted that a second viewer can be any subscriber from one of the terminals 130 – see part (a)); and

(d) means for processing the second-viewer demographic information and first viewer multimedia viewing information to obtain a second signal for delivery to the message server for selecting therefrom a desired second sponsored video message, the second message to be viewed by the second viewer at a viewing station logged onto by said second viewer (similar as part (b) above – see part (b)).

Regarding claim 6, Montero discloses steps (g) and (j) that the records including logon and click event record are updated each time the subscriber logs in at the viewing station (terminal 130), wherein the viewing station is operatively connected to the processing system through the Internet (100 – see figure 1; col. 5, lines 14-25; col. 7, line 40 to col. 8, line 5; col. 11, lines 27-44; col. 12, lines 40-49; col. 13, lines 15-29). Further regarding steps (k) and (l), similar as steps (g) and (i) in claim 1 above – see (g) and (i)).

Regarding claim 7, Montero discloses delivering the second message during the delivery of multimedia content to the viewing station of the first viewer (delivering the second sequence of information during delivery of web page to the terminal 130 of the subscriber - see col. 8, lines 27-36).

Regarding claim 8, Montero discloses the processing being independent of the multimedia content (presenting the sequence of information and the requested web page without interfere – see col. 8, lines 34-41).

Regarding claim 9, Montero discloses delivering the second viewer multimedia message to a viewing station of the second viewer (similar as step (i) in claim 1 above for the second subscriber at one of the terminals 130 – see step (i)).

Regarding claim 10, Montero discloses delivering the message with multimedia content to the viewing station of the first viewer (delivering the second sequence of information with delivering of the requested web page to the terminal 130 of the subscriber - see col. 8, lines 27-36).

Regarding claim 15, Montero discloses the first multimedia message is a video message (see col. 4-5, lines 63-4).

Regarding claim 16, Montero discloses the viewing behavior is video viewing behavior (requested program or web page – see col. 8, lines 6-25; col. 20, lines 39-42).

Regarding claim 17, Montero discloses the viewing behavior information including the time of viewing by the first viewer (e.g., click event record – see col. 13, lines 16-62).

Regarding claim 18, Montero discloses the viewing behavior information including the length of viewing time of the first viewer at the viewing station (e.g., login and log out time – see col. 13, lines 16-62).

Regarding claim 20, Montero discloses delivering the first viewer multimedia

message to the viewing station simultaneously with the delivers of the multimedia content thereto (see col. 8, lines 27-33).

Regarding claim 22, it is noted that the content of web site is not displayed if it is not downloaded completely.

Regarding claim 25, Montero discloses the sequence of information is selected for each subscriber (e.g., first subscriber and second subscriber) in accordance with the subscriber's profile data including additional profile data (demographic information) and subscriber's click event record (viewing information). A sequence of information (sponsored video message) is dynamically and individually generated for each subscriber (see col. 5, lines 14-25; col. 13, lines 62-67).

Regarding claim 28, Montero discloses the viewing information includes viewing information on the first viewer every time the first viewer logs onto the processing system and views multimedia content (see col. 12, line 40 to col. 13, line 62).

Regarding claim 33, Montero discloses a recipient assembly which presents viewer/viewing information transmitted thereto by the processing server (e.g., database 260 via server 250 – figure 1).

Regarding claim 36, Montero discloses the server programmed to transmit viewer/viewing information to a recipient assembly for presentation to a recipient (e.g., database 260 via server 250 – figure 1).

Regarding claim 38, Montero discloses the server programmed to transmit viewer/viewing information to a recipient assembly for presentation to a recipient (e.g., database 260 via server 250 – figure 1).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 21, 29, 30, 39, 40 and 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montero (US 6,133,912 A).

Regarding claim 11, Montero discloses downloading the web page when the subscriber requested (see col. 8, lines 6-26) and recording the click event on the link regions (see col. 13, lines 16-45). Montero does not explicitly disclose viewing behavior information including downloading speed information of the viewing station. Official Notice is taken that determining the speed of transmission when downloading the data over the Internet is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Montero by determining the downloading speed information in order to select whether download content is formatted either in high resolution or lower resolution for a fast connection or slow connection.

Regarding claims 21, 29 and 30, Montero does not explicitly disclose pre-caching the sponsored message at the viewing station. Official Notice is taken that pre-caching data or pre-loading data is commonly used in the industry. It would have been obvious to one of ordinary skill in the art to modify Montero by pre-caching data or pre-downloading a local copy of data accessed over a network to a specialized local buffer storage that is continually updated in order to optimize data transfer.

Regarding claim 44, Montero discloses a presentation delivery method, comprising:

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loading from the Internet at least a portion of multimedia content at the viewing station (loading from internet 100 the a requested web page at terminal 130 – see figure 1 and col. 8, lines 5-26);

presenting a sponsored message from the Internet at the viewing station to a viewer (presenting a sequence of information from the internet 100 to the terminal 130 – see col. 4, line 63 to col. 5, line 6; col. 13, lines 63-67; col. 14, lines 55-60 – see );

presenting the multimedia content through the Internet at the viewing station to the viewer (presenting the requested web page at the terminal 130 – see col. 8, lines 20-30).

Montero does not explicitly disclose pre-caching the sponsored message at the viewing station. Official Notice is taken that pre-caching data or pre-loading data is commonly used in the industry. It would have been obvious to one of ordinary skill in the art to modify Montero by pre-caching data or pre-downloading a local copy of data accessed over a network to a specialized local buffer storage that is continually updated in order to optimize data transfer.

Regarding claims **45-47**, Montero discloses that based on viewing behavior information, e.g., click event, and demographic information, e.g., subscriber's profile data, to select a sequence of information, e.g., the sponsored message, for a particular subscriber – see 13, lines 59-67; col. 14, lines 55-60 and col. 5, lines 14-25).

Regarding claim **48**, Montero discloses that the sponsored message is video message (see col. 4-5, lines 63-4).

Regarding claims **39 and 40**, Montero discloses a presentation delivery method, comprising:

logging by a user to a viewing station (logging by a subscriber at one of stations 130 - see figure 1; col. 6, line 36 to col. 7, line 8);

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delivering a sponsored message over the Internet to the viewing station (delivering sequence of information over the internet 100 to the terminal 130 – see col. 4, line 63 to col. 5, line 6; col. 13, lines 63-67; col. 14, lines 55-60);

delivering multimedia content to the viewing station (delivering a requested web page to the terminal 130 - see col. 8, lines 21-33 and figure 1);

presenting the delivered multimedia content at the viewing station (presenting the requested web page at the terminal 130 – see col. 8, lines 20-30).

Montero discloses present the delivered message (sequence of information) for next session (see col. 13, lines 64-67; col. 14, lines 55-60).

Montero does not explicitly disclose pre-caching the delivered message at the viewing station. Official Notice is taken that pre-caching data or pre-loading data is commonly used in the industry. It would have been obvious to one of ordinary skill in the art to modify Montero by pre-caching data or pre-downloading a local copy of data accessed over a network to a specialized local buffer storage that is continually updated in order to optimize data transfer.

***Allowable Subject Matter***

8. Claims 19 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims **19 and 43**, Montero of record discloses providing a targeted sequence of information, e.g., advertisement, to a subscriber based on the clicked event record from web page usage record of the subscriber as well as the demographic information of the subscriber. Montero either in singular or in combination, fails to disclose “presenting the first viewer multimedia messages when there is a break in the availability of the multimedia content for presentation at the viewing station” as recited in claim 19, and “the multimedia content is not

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available because (d) includes a break in the delivering of the multimedia content" as recited in claim 43.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc K. Vu whose telephone number is 703-306-5976. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

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*L. Kostak*

VICTOR R. KOSTAK  
PRIMARY EXAMINER

NV

January 24, 2004